ARKANSAS SUPREME COURT

No. CR 06-37

NOT DESIGNATED FOR PUBLICATION	**Opinion Delivered** September 28, 2006
EZEQIEL BELTRAN Appellant	*PRO SE* APPEAL FROM THE CIRCUIT COURT OF CRAWFORD COUNTY, CR 2003-580, HON. MICHAEL MEDLOCK, JUDGE
v.	
STATE OF ARKANSAS Appellee	AFFIRMED

PER CURIAM

Ezeqiel Beltran entered a plea of guilty to one count each of possession of methamphetamine with intent to deliver, possession of cocaine with intent to deliver, possession of drug paraphernalia and failure to appear. He received an aggregate sentence of fifty years' imprisonment with suspended imposition of twenty-six years of the sentence.

Subsequently, appellant timely filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the Rule 37.1 petition without a hearing, and appellant, proceeding *pro se*, has lodged an appeal here from that order.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

In 2004, appellant, a long-haul truck driver, stopped at a weigh station outside of Van Buren,

Arkansas, while traveling from Los Angeles to Nashville with a load of lettuce. His truck was flagged for a random inspection. Officer Kathy Davis with the Arkansas Highway Police asked to see appellant's log book and noted that he appeared nervous. When she asked him about the time he had taken off during this trip, appellant's responses did not match the information contained in the log book. She then asked him for consent to search his truck, and appellant signed a consent-to-search form and a waiver-of-rights form.

While inspecting the cab and sleeping quarters, she discovered what appeared to be bundles of drugs. She then requested that the K-9 unit of the Van Buren Police Department provide back up. During a second search, the police discovered approximately sixty pounds of cocaine, approximately five pounds of methamphetamine and 570 oxycodone tablets, with a street value of approximately $2.5 million, as well as alcoholic beverages. The officers arrested appellant and his son, who had been asleep in the truck, and seized the contraband found in the truck.

The United States Drug Enforcement Agency was called to the scene. Appellant stated to DEA agents that he had been advised of his *Miranda* rights, but agreed to answer a limited number of questions. During this questioning, appellant admitted to the DEA agents that he had previously hauled fifteen pounds of cocaine along the same route and believed the bundles contained only cocaine. He would not identify who had hired him for this particular job. He also stated that all the blame should be placed on him as his son had no knowledge of the drugs. The DEA discovered that appellant had a prior criminal record.

Appellant and his son were originally represented simultaneously by four attorneys, including two local attorneys, Don Langston and Joel Price, as well as two out-of-state attorneys. Attorney Langston filed a motion to suppress all evidence seized during the search and seizure and arrest,

based on lack of probable cause to search appellant's truck, and to suppress appellant's confession.

A hearing date on the motion to suppress and a trial date were set. Appellant and his son failed to appear at the suppression hearing and a warrant was issued for their arrest.[1] After the attorneys were unable to contact appellant or his son, all four moved to withdraw as their attorneys-of-record. The motions for withdrawal were granted. The trial court appointed a public defender, William L. Griggs, to represent appellant after he was arrested pursuant to a bench warrant and returned to Arkansas. Appellant's first attorneys worked on obtaining a plea bargain for him, and Mr. Griggs secured a better plea agreement that appellant eventually entered into with the State.

We first note that appellant's addendum does not contain the notice of appeal as required by Ark. Sup. Ct. R. 4-2(a)(8). We will, however, not require appellant to file a substituted addendum or abstract to cure these deficiencies in conformance with Ark. Sup. Ct. R. 4-2(b), as it is clear on the record before us that appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

In the instant matter, appellant argues that trial counsel rendered ineffective assistance of counsel. His contentions relate to appellant's motion to suppress. He claims that his first set of attorneys failed to inform him of the suppression hearing, causing his case to be fatally prejudiced by appellant's lack of attendance, and that they improperly abandoned their representation of appellant. He also argues that his second attorney did not seek a hearing on the motion, coerced him to accept the plea agreement, and that but for counsels' actions, he would not have entered a plea of guilty.

To prevail on a claim of ineffective assistance of counsel, appellant must show that counsels'

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[1]The charge of failure to appear resulted from this incident.

representation fell below an objective standard of reasonableness and that but for counsels' errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *Andrews v. State*, 344 Ark. 606, 42 S.W.3d 484 (2001) (*per curiam*). There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Noel v. State,* 342 Ark. 35, 26 S.W.3d 123 (2000). To rebut this presumption, appellant must show that there is a reasonable probability that the decision reached would have been different absent the errors. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A reasonable probability is one that is sufficient to undermine confidence in the outcome of the trial. *Id.*

The burden is on appellant to provide facts to support his claims of prejudice. *Nelson v. State*, 344 Ark. 407, 39 S.W.3d 791 (2001) (*per curiam*). Allegations without factual substantiation are insufficient to overcome the presumption that counsel was effective. *Id.* Conclusory statements cannot be the basis of postconviction relief. *Jackson v. State,* 352 Ark. 359, 105 S.W.3d 352 (2003). Where a case involves an allegation of ineffectiveness in relation to a guilty plea, the appropriate standard of prejudice is whether, but for counsel's errors, there is a reasonable probability that the defendant would not have entered a guilty plea and thereby waived his right to a trial. *Jones v. State*, 355 Ark. 316, 136 S.W.3d 774 (2003).

Appellant's arguments are interwoven to the extent that he claims that but for counsels' actions, he would have had a suppression hearing, and that but for their failure to seek a suppression hearing, he would not have entered a plea of guilty. Appellant's claims are based upon the presumption that he would have been successful in a suppression hearing, thereby preventing any evidence or statements from being admissible in support of the charges.

Here, appellant sets forth the proper standard for claims of ineffective assistance of counsel.

Even so, while he characterizes the search and his subsequent arrest as "unconstitutional" and "unlawful," appellant fails to argue the *facts* of his case or indicate a *factual* basis that supports a finding of prejudice to the defense. Appellant has thus failed to meet his burden of satisfying either prong of *Strickland* by relying solely upon conclusory statements and unsubstantiated allegations with no factual basis. *Nelson*, *supra*; *Jackson*, *supra*. An appellant must present a factual case as this court does not research or develop arguments for appellants. *Hester v. State*, ___ Ark. ___, ___ S.W.3d ___ (May 19, 2005).

Moreover, as the transcript indicated that appellant entered into the plea agreement intelligently and voluntarily, appellant has failed to show how he was coerced into entering his guilty plea. And, as appellant's counsel was working on appellant's behalf with regard to securing a plea agreement, and was in fact able to effectuate a desirable plea agreement for appellant, we cannot say that trial counsel was deficient in not pursuing a suppression hearing. Accordingly, we cannot say that the findings of the trial court were clearly erroneous.

Affirmed.